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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT SEATTLE**

10 A. ADRIAN RODRIGUEZ,

11 Plaintiff,

12 v.

13 FEDERAL DEPOSIT INSURANCE  
14 CORPORATION as receiver for Washington  
15 Mutual Bank; and FEDERAL DEPOSIT  
16 INSURANCE CORPORATION in its  
17 Corporate Capacity,

18 Defendants.

No.

**COMPLAINT**

**[JURY TRIAL DEMANDED]**

19 **I. PARTIES**

- 20 1. Washington Mutual Bank (“Washington Mutual”) was a banking company headquartered  
21 and doing business at Seattle, Washington.
- 22 2. Federal Deposit Insurance Corporation (“FDIC”) is a corporation and agency of the  
23 United States that acted as the receiver and successor for Washington Mutual in order to  
24 facilitate a sale of Washington Mutual to JP Morgan Chase, another banking company.
- 25 3. Federal Deposit Insurance Corporation (“FDIC”) in its corporate capacity acted as the  
26 successor for Washington Mutual until Washington Mutual was sold to JP Morgan Chase,  
27 another banking company.

- 1 4. Washington Mutual, at all times material to the allegations in this complaint, was a  
2 corporation headquartered and with its principal place of business in Seattle, Washington.
- 3 5. Upon information and belief, FDIC is a corporation and agency of the United States  
4 Government, with its principal place of business in the District of Columbia, and at all  
5 times material, is the successor and receiver for Washington Mutual. FDIC is made a  
6 defendant herein both as a receiver for Washington Mutual ("FDIC-Receiver") and in its  
7 corporate capacity ("FDIC-Corporate") as an independent entity of the United States  
8 Government with separate duties to Plaintiff.
- 9 6. Plaintiff A. Adrian Rodriguez is an individual. Mr. Rodriguez at all material times was an  
10 employee of Washington Mutual in Seattle, Washington.

## 11 II. JURISDICTION AND VENUE

- 12 7. The United States District Court has subject matter jurisdiction over this matter pursuant  
13 to 28 U.S.C. §1331, 12 U.S.C. §1821, and 28 U.S.C. § 1346.
- 14 8. This Court has personal jurisdiction over all the parties.
- 15 9. Venue is proper pursuant to 28 U.S.C. 1391(e).
- 16 10. Venue is proper pursuant to 29 U.S.C. § 1332(e) and 28 U.S.C. § 1391.
- 17 11. Venue is proper pursuant to 12 U.S.C. § 1819(b)(2)(a) and 1821 (d)(6).
- 18 12. Plaintiff has complied with all procedural and administrative prerequisites to filing suit by  
19 presenting a claim to the FDIC which has been denied.
- 20 13. Venue is proper pursuant to 28 U.S.C. § 2201.

## 21 III. FACTUAL BACKGROUND

- 22 14. Plaintiff entered into a binding employment contract with Washington Mutual which  
23 contained a provision referred to as a "change in control" clause. The change in control  
24 clause provided for compensation to Plaintiff if Washington Mutual underwent a change  
25 in control.
- 26 15. Washington Mutual's liability under Plaintiffs' change in control agreement was a readily  
27 ascertainable sum-certain amount as of September 2008.
16. According to the FDIC's website, "On September 25, 2008, the banking operations of  
Washington Mutual, Inc - Washington Mutual Bank, Henderson, NV and Washington  
Mutual Bank, FSB, Park City, UT (Washington Mutual Bank) were **sold** in a transaction  
facilitated by the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance  
Corporation (FDIC)." (Emphasis added.)

- 1 17. On or about September 25, 2008, Washington Mutual underwent a change in control  
2 pursuant to that certain Purchase and Assumption Agreement.<sup>1</sup> FDIC, in both its corporate  
3 and receiver capacity, retained the Washington Mutual liabilities to the Washington  
4 Mutual employees, including payment of wages, for change in control.
- 5 18. All employment agreements, including the change in control and other compensation  
6 agreements were explicitly excluded from the FDIC's sale to JP Morgan Chase.<sup>2</sup>  
7 Therefore, the liability for the change in control agreements remains with the FDIC.
- 8 19. Plaintiff filed a claim with the FDIC to recover compensation due and owing based upon  
9 the change of control agreement and other liabilities of the FDIC.
- 10 20. The FDIC breached Plaintiff's employment contract by refusing to honor Plaintiff's  
11 claims.
- 12 21. Plaintiff has been damaged by the wrongful conduct of the FDIC.
- 13 22. The Federal Deposit Insurance Act states that the FDIC "[s]hall pay all valid obligations  
14 of the insured depository institution." 12 U.S.C. § 1821(d)(2)(H).
- 15 23. The Federal Deposit Insurance Act further obligates the FDIC to "allow any claim  
16 received on or before the date specified in the notice published under paragraph (32)(B)(i)  
17 by the receiver from any claimant which is proved to the satisfaction of the receiver."  
18 12 U.S.C. § 1821(d)(5)(B).

#### 19 **IV. FIRST CAUSE OF ACTION** 20 **(BREACH OF CONTRACT)**

- 21 24. Plaintiff repeats and realleges each and every allegation set forth in the foregoing  
22 paragraphs as if fully set forth herein.
- 23 25. Plaintiff had a binding employment agreement with Washington Mutual that included  
24 compensation in the event that Washington Mutual Bank underwent a change in control  
25 event.
- 26 26. In or about September 2008, Washington Mutual underwent a change in control event.
- 27 27. The FDIC, in both its capacity as a receiver and corporation, acted as the successor and  
receiver for Washington Mutual.

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1. <sup>1</sup> See [http://www.fdic.gov/about/freedom/Washington\\_Mutual\\_P\\_and\\_A.pdf](http://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf) (hereinafter the "PAA").

2. <sup>2</sup> See PAA, Schedule 2.1, ¶ 5.

28. The FDIC did not sell Plaintiff's binding employment agreements with Washington Mutual to JP Morgan Chase pursuant to the PAA.

29. The FDIC breached plaintiff's employment contracts by refusing to honor the change in control clause and refusing to pay the liability due thereunder.

### V. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

30. Judgment against Defendant for direct and consequential damages in an amount to be determined at trial;

31. Exemplary damages for the willful withholding of wages pursuant to RCW § 49.52;

32. Attorneys' fees and costs pursuant to RCW §§ 49.48 and 49.52;

33. For such other and further relief as this court deems just and equitable.

Dated this 13<sup>th</sup> day of November 2009.

COULTER MARTIN SMITH PLLC



Jefferson Coulter  
WSBA#28947  
Attorney for Plaintiff